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No. 10-888

Supreme Court, U.S.
FILED
MAR 11 2010
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

JOHN CASCIANI,

Petitioner,

v.

RONALD NESBITT, TOWN BOARD SUPERVISOR,
In His Individual and Official Capacity,
TOWN OF WEBSTER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether Petitioner has presented compelling reasons to grant the Petition, where the Second Circuit affirmed dismissal of Petitioner's Equal Protection, "class-of-one" claim on two separate, independent grounds without even reaching, as an additional basis for dismissal, the non-discretionary action element under *Engquist* that, according to Petitioner, would warrant review.

II. Whether Petitioner has presented compelling reasons to grant the Petition, where the Second Circuit affirmed dismissal of Petitioner's Equal Protection, "class-of-one" claim on two separate, independent grounds without even reaching, as an additional basis for dismissal, the "subjective ill will" element that, according to Petitioner, would warrant review.

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INTRODUCTION

Petitioner has presented no "compelling reasons" for his Petition for a Writ of *Certiorari* to be granted (the "Petition"). *See* Sup. Ct. R. 10. Petitioner has not demonstrated that the Second Circuit's September 7, 2010 Opinion (the "Opinion")[1] is in conflict with a decision of this Court or another Court of Appeals or implicates a federal question that has not been decided by this Court. *See* Sup. Ct. R. 10. Instead, Petitioner wastes this Court's time with alleged issues that the Second Circuit never reached, nor needed to reach, as there were already ample other grounds for affirming the District Court's summary judgment dismissal of Petitioner's class-of-one, Equal Protection claim.

Petitioner contends that this Court's decision in *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008), has been applied by the various Circuits in different ways, thus creating a split that must be resolved by the Court (*i.e.*, some courts have extended *Engquist* to apply to class-of-one, Equal Protection claims arising outside of the public employment context, while others have declined to do so). (*See* Pet. App. at 31-38). Petitioner also claims that courts applying this Court's decision in *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000) (*per curiam*) are split as to whether class-of-one, Equal Protection claims require a showing that "subjective ill will" motivated the alleged disparate treatment. (*See* Pet. App. at 38-40).

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1. *Cascianı v. Nesbitt*, 392 F. App'x 887 (2d Cir. 2010); Pet. App. at 2a-6a.

But the Second Circuit did not even consider whether non-discretionary state action and subjective ill will are required elements of a class-of-one claim, as there was no reason for it to even reach those issues. The Opinion affirmed the District Court's summary judgment dismissal of Petitioner's class-of-one claim on two separate, independent grounds, namely: (1) the ordinance Petitioner complains of was never actually enforced against him — or anyone, for that matter; and (2) Petitioner's purported "comparators" were not, in fact, similarly situated to him. The Second Circuit did not even cite to *Engquist* in its Opinion. Likewise, neither the Second Circuit nor the District Court addressed the ill-will element in the context of Petitioner's class-of-one claim. Because Petitioner did not make the threshold showing of disparate treatment, his class-of-one claim is fatally flawed at its core, and there is no ruling this Court could make concerning non-discretionary state action or subjective ill will that would revive it. Any ruling by this Court in this case would be mere academic dicta.

Moreover, no legitimate Circuit splits exist as to *Engquist*. Presented with varying factual circumstances, courts have unsurprisingly reached varying conclusions concerning whether to extend *Engquist*. But that hardly means that a conflict has arisen concerning under which specific circumstances *Engquist* may be extended.

Petitioner has failed to carry his burden of demonstrating that there are any compelling reasons why this Court should grant the Petition. Accordingly, the Petition should be denied.

STATEMENT OF THE CASE

This case is about a man and his helicopter. Petitioner John Casciani insists that he is Constitutionally entitled to take off and land his privately-owned helicopter in the yard of his home located in a residential subdivision within the Town of Webster (the "Town"), a well-populated suburb of Rochester, New York. (*See* Pet. App. at 7a-8a). The Town — prudently, and in an effort to protect the safety and quality of life of its residents — enacted Chapter 76 of the Town Code, which prohibited any aircraft from taking off or landing within Town limits (the "Ordinance"). (*See* Pet. App. at 7a-8a). Petitioner concluded, however, that the Town was not motivated by a desire to do what was best for the community, but rather by anti-Italian-American animus towards him, and he commenced this civil rights action against the Town and its Supervisor, Ronald Nesbitt. (*See* Pet. App. at 14a-15a, 60a).

In 2003, Petitioner purchased a helicopter for his personal use and constructed a fourteen-square-foot landing pad on his residential property in the Town to accommodate its operation. (*See* Pet. App. 8a). At the time, the Town Code did not contain any provisions aimed at the operation of aircraft within Town limits (*see* Pet. App. at 9a), although New York General Business Law § 249 ("GBL § 249") prohibited the establishment of "privately-owned airport[s]" without the authorization of the "governing body of the city, village or town" where the airport is situated.[2] GBL § 249 defines "airport" as "any locality . . . which is used or intended to be used for

2. N.Y. GEN. BUS. L. § 249(3) (McKinney 2011).

the landing and take-off of aircraft . . ."[3] Petitioner never obtained permission from the Town to takeoff or land his helicopter on his property, as required by GBL § 249. (*See* Pet. App. at 9a-11a). But the Town never enforced GBL § 249 against Petitioner, or anyone else. (*See* Pet. App. at 43a, 53a, 56a-59a).

In or about 2005, the Town's Comprehensive Planning Committee formed a subcommittee (the "Subcommittee") to consider the regulation of aircraft within the Town. (*See* R. at A-51). The Subcommittee's members included Petitioner's father, Anthony Casciani, who has been a member of the Town's Planning Board for many years and who, like Petitioner, is a prominent Webster real estate developer. (R. at A-51). On March 2, 2006, the Town Board held a public meeting concerning a proposed aircraft ordinance drafted by the Subcommittee. (R. at A-51). The Ordinance, as originally drafted by the Subcommittee, granted the Town Board discretion to authorize private airports, including landing areas, based upon general health, safety, welfare, and environmental concerns. (R. at A-51).

The proposed ordinance encountered substantial public opposition. Over two-hundred residents attended the March 2, 2006 meeting, and dozens spoke out against permitting private airports and landing areas, including Petitioner's helipad, emphasizing the risk to public safety and the substantial noise associated with private aircraft such as helicopters. (R. at A-51). Several Town officials, including the Town Fire Marshall and Building Inspector,

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3. N. Y. GEN. BUS. L. § 240(4), (5) (incorporated by reference in Section 249).

also expressed misgivings about the proposed ordinance. (R. at A-51). Only a few attendees spoke out in favor of the ordinance as originally drafted. (R. at A-51).

In response to this overwhelming opposition, the proposed legislation was revised, and on April 6, 2006, the Town enacted the Ordinance, as revised. (*See* R. at A-51, A-55–57; Pet. App. at 13a). The Ordinance contains an exemption for "ultralight" aircraft, which are defined, in part, as a recreation or sport craft that is manned by a single occupant, has an empty weight of less than 155 pounds, unpowered or 254 pounds, powered, and a fuel capacity not exceeding five gallons. (*See* R. at A-55–57; Pet. App. 14a). Significantly, the operation of ultralights is already prohibited in congested areas by federal law. (*See* R. at A-753–54; 14 C.F.R. § 103.15). The Ordinance makes no exemption for helicopters, whose use in congested areas is not prohibited under federal law. (*See* R. at A-55–57; Pet. App. at 14a). The Ordinance thus prohibits Petitioner from taking off or landing his helicopter within the boundaries of the Town. (*See* R. at A-55–57; Pet. App. at 13a). But the Town never enforced the Ordinance against Petitioner, or anyone else. (*See* Pet. App. at 43a, 53a, 56a).

Two years after the Ordinance was enacted, Petitioner commenced this action under 42 U.S.C. § 1983, alleging the following four causes of action: (1) violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, based on "selective enforcement" of the Ordinance; (2) violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, based on "class-of-one" arbitrary discrimination; (3) violation of the First Amendment to the United States Constitution, based on

retaliation for Petitioner's exercise of free speech; and (4) a declaration that the Ordinance is unconstitutional, pursuant to 28 U.S.C. § 2201. (*See* Pet. App. at 14a-15a).

Respondents moved to dismiss Petitioner's complaint under Rule 12(b)(6). (*See* Pet. App. at 8a). Petitioner opposed the respondents' motion and cross-moved to amend his complaint under Rule 15(a). (*See* Pet. App. at 8a). After converting the Respondents' motion into a Rule 56 Motion for Summary Judgment, Hon. David G. Larmier, United States District Judge, Western District of New York, issued a thorough, forty-page decision. This decision granted the Respondents' summary judgment motion and denied Petitioner's cross-motion to amend his complaint as futile. (*See generally Casciani v. Nesbitt*, 659 F. Supp. 2d 427 (W.D.N.Y. 2009); Pet. App. at 7a-93a).

Petitioner appealed the District Court's decision to the Second Circuit Court of Appeals, which upheld it in its entirety. (Pet. App. at 2a-6a). As to his class-of-one claim — the only claim Petitioner addresses in this Petition — the Second Circuit recognized that a plaintiff must establish: (1) differential treatment; (2) as compared with others who are similarly situated to himself — noting that an "extremely high degree of similarity" is required; and (3) that such differential treatment was without rational basis.[4] (Pet. App. at 3a-4a). The Second Circuit held that

4. Petitioner alleged a violation of his Equal Protection rights on two alternative bases: (1) class-of-one; and (2) selective enforcement. (*See* Pet. App. at 3a). As the Second Circuit recognized, the sole difference between these two theories is the third element (*i.e*, to establish a class-of-one claim, a plaintiff must show that the differential treatment was without rational basis; and to establish a selective enforcement claim, a plaintiff must

the District Court properly found that "[Petitioner] failed to raise a genuine issue of fact as to disparate treatment." (Pet. App. at 4a). Specifically, the Second Circuit found that Petitioner failed to establish the first two, critical elements of a class-of-one claim:

> The individuals [Petitioner] cites as examples were not similarly situated because they did not take off or land helicopters from residential property in the town. . . . In any event, they were not treated differently because the challenged ordinance was never enforced against either [Petitioner] or the individuals to which he would compare himself.

Pet. App. at 4a (internal citations omitted).

Petitioner now seeks a writ of *certiorari* from this Court, on the stated bases that: (1) there is a Circuit split as to whether this Court's decision in *Engquist v. Oregon Department of Agriculture* applies to cases arising outside of the public employment context; and (2) there is a Circuit split as to whether class-of-one claims require a showing that the differential treatment received by the plaintiff was motivated by subjective ill will.

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show that the differential treatment was motivated by an intent to discriminate or on an impermissible basis). (*See* Pet. App. at 3a-4a). Petitioner only seeks a writ of *certiorari* as to his class-of-one claim — not his alternative selective enforcement claim. This brief, therefore, addresses only the elements required to establish a class-of-one claim.

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any Court of Appeals, nor do they implicate a federal question that has not been decided by this Court. Moreover, Petitioner's class-of-one claim fails in any event for reasons independent of the issues raised in the Petition; therefore, any decision by this Court concerning those issues raised would be purely academic and have no impact on the outcome of this case. Accordingly, Petitioner has not carried his burden of demonstrating any compelling reasons for the Court to grant his Petition. *See* Sup. Ct. R. 10.

I. The Court Should Deny the Petition Because Resolution of the Issues Raised By Petitioner Would Be Purely Academic

The Second Circuit affirmed the District Court's dismissal of Petitioner's class-of-one, Equal Protection claim because Petitioner failed to demonstrate that he was treated differently from any similarly-situated individuals. (*See* Pet. App. at 4a). But in his Petition, Petitioner does not address these bases on which the Second Circuit affirmed. Rather, Petitioner asks this Court to resolve two purported Circuit splits concerning whether class-of-one claims require a showing of: (1) non-discretionary state action; or (2) subjective ill will. (*See generally* Pet. App.).

This Court should deny *certiorari* if the resolution of a conflict among the Circuit Courts would be irrelevant to the outcome of the case before it.[5] Here, even if the

5. *See, e.g.*, EUGENE GRESSMAN, ET AL., SUPREME COURT PRACTICE 248 (9th Ed. 2007) (citing *Sommerville v. United*

Circuit splits asserted by Petitioner do exist — which Respondents do not concede — the issues Petitioner asks this Court to resolve are irrelevant to the outcome of this case. Petitioner's class-of-one claim turned — and failed — on his inability to prove that he was treated differently from others who were similarly situated. Any general conclusions this Court might hazard here concerning non-discretionary state action and subjective ill will would be mere academic dicta, as it would not change the result in this particular case. Accordingly, this Court should deny the Petition.

A. Petitioner Cannot Establish Any Of the Elements Required in a Class-of-One Claim

As recognized by the Second Circuit in its Opinion, to establish a "class-of-one" Equal Protection claim, "a plaintiff must show that he 'has been treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'"[6] Failure to establish ***any one*** of these elements precludes a plaintiff from prevailing on his class-of-one claim.[7]

States, 376 U.S. 909 (1964) (denying *certiorari* where respondents conceded the existence of a conflict among the Circuit Courts because the resolution of the conflict would not change the result reached below)).

6. *Howard v. Town of Bethel*, 481 F. Supp. 2d 295, 306 (S.D.N.Y. 2007) (*quoting Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). *See also* Pet. App. at 3a-4a.

7. *See Ferguson v. City of Rochester Sch. Dist.*, 485 F. Supp. 2d 256, 260 (W.D.N.Y. 2007).

1. Petitioner's "Comparators" Are Not Truly Comparable

The similarity between a plaintiff and his comparators must not merely be "extremely high" but "*prima facie* identical."[8] A plaintiff must demonstrate that:

> (i) no rational person could regard the circumstances of the plaintiff to differ from those of a comparator to a degree that would justify the differential treatment on the basis of a legitimate government policy; and (ii) the similarity in circumstances and difference in treatment are sufficient to exclude the possibility that the defendant acted on the basis of a mistake.[9]

Here, Petitioner proffered five individuals as "similarly situated" to himself: Jack Roessel, Robert Bechtold, Brian Hegedorn, Richard Swingly, and Thad Swift. (*See* Pet. App. 45a-59a). But none of these comparators is truly "similarly situated" to Petitioner. None owned or operated helicopters. Hegedorn, Swingly, and Roessel allegedly operated planes — not helicopters. (*See* Pet. App. at 46a). Swift "had helicopters land at his property commonly known as 'Hedges Nine Mile Point Restaurant'" but did not actually own or operate a helicopter. (*See* Pet. App. at 57a-59a). And Bechtold owns and operates ultralights, which are expressly ***permitted*** by the Ordinance. (*See* Pet. App. at 46a).

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8. *Howard*, 481 F. Supp. 2d at 306.

9. *Id.* at 306-07 (internal quotation marks and citation omitted).

Moreover, Hegedorn, Swift, and Swingly represent historic examples of aircraft use within the Town. They operated aircraft (or permitted aircraft operations on their property) decades ago — long before the enactment of the Ordinance. (*See* Pet. App. at 46a, 57a). There is further no evidence that the Town had knowledge of Roessel's seaplane. (*See* Pet. App. at 54a). In short, ***none*** of Petitioner's purported "comparators" are "*prima facie* identical" to Petitioner — a fact recognized by both the District Court and the Second Circuit. (*See generally* Pet. App. at 46a-59a, 67a-69a, 4a). Petitioner's class-of-one claim thus fails for the inability to establish the required element of similarly situated individuals.

2. Because There Was No Enforcement, Petitioner Cannot Establish Disparate Treatment

A second, crucial element of a class-of-one claim is that the plaintiff was ***treated differently*** from others who are similarly situated.[10] So even if Petitioner had identified legitimate comparators — which he did not — his class-of-one claim fails in any event because he is unable to show that Respondents treated him differently from anyone else.

Indeed, Petitioner and his purported comparators received the ***same treatment***: none of them was subject to enforcement of either GBL § 249 or the Ordinance. GBL § 249 prohibits the operation of private airports and airstrips unless authorized by the municipality.[11]

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10. *Howard*, 481 F. Supp. 2d at 306.

11. N.Y. GEN. BUS. L. § 249(3).

Petitioner's operation of his helicopter (taking off from and landing on his backyard helipad) was plainly proscribed by GBL § 249. And while it is true that none of his comparators had to comply with this statute, it is also true that Petitioner did not have to comply with it, either. (*See* Pet. App. at 56a-59a). On the contrary, Petitioner admits that he was able to fly and land his helicopter "as usual" while a Town committee drafted the Ordinance. (*See* R. at A-17). There was thus ***no enforcement*** of GBL § 249 against Petitioner or anyone else.

Similarly, the Ordinance prohibits aircraft from taking off or landing within Town limits. (*See* Pet. App. at 7a-8a). There is no dispute that Petitioner's operation of his helicopter (taking off from and landing on his backyard helipad) is proscribed by the Ordinance. But, as the Second Circuit recognized, there is also no dispute that "the challenged ordinance was ***never enforced*** against either [Petitioner] or the individuals to which he would compare himself." (*See* Pet. App. at 4a) (emphasis added).

Because the Town treated Petitioner in the same manner as it did his purported comparators — ***it never enforced either GBL § 249 or the Ordinance against any of them*** — Petitioner's class-of-one claim fails for the inability to establish the crucial element of "disparate" treatment.

B. The Issue of Non-Discretionary State Action Is Irrelevant to This Case

As discussed above, the District Court held — and the Second Circuit affirmed — that Petitioner's class-of-one claim failed because he was unable to establish the

elements of: (1) differential treatment; (2) as compared with others who are similarly situated to himself.

The District Court went on to find that any action taken by the Town to address the problem of the operation of aircraft within Webster (*i.e.*, passage of the Ordinance) was discretionary; and the action — if any — taken to enforce the Ordinance was likewise discretionary. (*See* Pet. App. at 69a-71a). The District Court thus found that Petitioner had failed to establish the *Engquist* element of non-discretionary state action. (*See id.*).

But the Second Circuit did not even address this additional element in its Opinion — because it was unnecessary to do so. It simply does not matter whether the Town's actions were or were not discretionary. Petitioner's class-of-one claim is fatally-flawed at its core because (as discussed above) the Ordinance was never enforced against Petitioner or anyone else, and those to whom Petitioner would compare himself are not "similarly situated" as that term is defined by the applicable case law. Under these facts, Petitioner's class-of-one claim was dead on arrival. Accordingly, even if this Court were to grant the Petition and make a ruling about whether non-discretionary state action is, indeed, an element of a class-of-one claim, that ruling would be purely academic dicta with ***no impact at all on this case***. The outcome would remain the same: Petitioner's class-of-one claim fails.

II. Petitioner Misconstrues the State of Class-of-One Jurisprudence

A. There Is No True Circuit Split to Resolve as to *Engquist*

Petitioner contends that this Court's decision in *Engquist* has been applied by courts within the various Circuits in different ways, thus creating a split that must be resolved by this Court (*i.e.*, some courts have extended *Engquist* to require a showing of non-discretionary state action in class-of-one, Equal Protection claims arising outside of the public employment context, while others have declined to do so). (*See* Pet. App. at 31-38). But the courts' various interpretations of *Engquist* have yet to ripen into a true cert-worthy conflict. At most, the courts are still in the process of considering the reach of *Engquist*, and the decisions that Petitioner cites are not in conflict with one another. These cases merely show that under varying factual circumstances, courts have come to varying conclusions about whether to extend *Engquist* beyond the realm of public employment.

For example, in *Analytical Diagnostic Labs, Inc. v. Kusel*, 626 F.3d 135 (2d Cir. 2010), the plaintiff medical laboratory brought an Equal Protection lawsuit against employees of the New York State Department of Health (the "DOH") alleging that the defendants "intentionally and maliciously subjected [the plaintiff] to an intense and unwarranted degree of regulatory scrutiny."[12] The District Court, relying on *Engquist*, granted defendants' motion for summary judgment and dismissed plaintiff's claims on the basis that plaintiff failed to show that

12. 626 F.3d at 137.

the alleged differential treatment resulted from non-discretionary state action.[13] The Second Circuit reversed, holding that "*Engquist* does not bar all class-of-one claims involving discretionary state action. While there may be some circumstances where *Engquist* is properly applied outside of the employment context, the case before us is not one of them."[14] *Kusel* thus neither prohibits nor mandates extending *Engquist*. It merely recognizes that there are certain factual circumstances in which extension will be appropriate and others in which it will not. This holding is in concert with the Seventh Circuit, which has extended *Engquist* in some cases,[15] while declining to extend in others.[16] Thus — contrary to Petitioner's argument —

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13. *Id.*

14. *Id.* at 142. While the Second Circuit reversed the District Court as to the issue of non-discretionary state action, it nevertheless affirmed dismissal of the plaintiff's claims for failure to show that it was treated differently from other, similarly situated entities. *Id.* at 137.

15. *See, e.g., Srail v. Vill. of Lisle*, 588 F.3d 940 (7th Cir. 2009) (applying *Engquist* to a municipality's decision to provide municipal water to some communities, but not others; decided ***after*** *Hanes v. Zurick*, *see* note 16). Other Circuit Courts have similarly held that *Engquist* may be extended to claims involving inherently discretionary action. *See, e.g., Douglas Asphalt Co. v. Qore, Inc.*, 541 F.3d 1269 (11th Cir. 2008) (extending *Engquist* to claims by government contractors); *Flowers v. City of Minneapolis*, 558 F.3d 794 (8th Cir. 2009) (extending *Engquist* to discretionary investigative decisions by police officer).

16. *See, e.g., Hanes v. Zurick*, 578 F.3d 491, 495-96 (7th Cir. 2009) (declining to extend *Engquist* to bar Equal Protection, class-of-one claim where plaintiff alleged that defendant police officer repeatedly arrested him without cause, because the officer was not exercising discretion in specifically targeting the plaintiff).

there is no true "Circuit split" that must be resolved by the intervention by this Court.

But even if a split does exist as to the reach of *Engquist* outside the public employment context — which it does not — this case does not provide the proper vehicle for the Court to test this issue because: (1) any decision the Court could issue regarding *Engquist's* reach would not change the outcome of this case — Petitioner's class-of-one claim would fail regardless — and would be purely academic; and (2) this case is a highly fact-specific land-use dispute, and, therefore, any ruling by this Court would be difficult to generalize to other situations. Indeed, it is not even clear which discretionary action the Petitioner is seeking to challenge, as the Town never enforced GBL § 249 or the Ordinance against him. Accordingly, the Court should deny the Petition.

B. Petitioner's Assertion of a Circuit Split Concerning "Subjective Ill Will" Is Merely a Red Herring

Petitioner also claims that courts applying this Court's decision in *Olech* are split as to whether class-of-one, Equal Protection claims require a showing that the differential treatment received by the plaintiff was motivated by "subjective ill will." (*See* Pet. App. at 38-40). But this argument is a red herring that exemplifies the baselessness of this Petition. Neither the District Court nor the Second Circuit even addressed the issue of "subjective ill will" in their decisions concerning

Petitioner's class-of-one claim.[17] Thus, any inquiry into this issue would be plainly irrelevant here. Moreover, as discussed in Point I.A., above, Petitioner's class-of-one claim fails regardless of whether a showing of "ill will" is required; therefore, any conclusions this Court might reach on the possible element of "ill will" would have no impact on the outcome of this case and be simply academic dicta. And the highly fact-specific nature of this case would again severely limit the application of any ruling by this Court outside the context of this case.

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17. "Class-of-one" and "selective enforcement" are two separate claims. *See, e.g., Cobb v. Pozzi*, 363 F.3d 89, 109-10 (2d Cir. 2004). Where a class-of-one claim requires that the plaintiff show that there was no "rational basis" for the differential treatment he received, *Howard*, 481 F. Supp. 2d at 306, to establish a selective enforcement claim, the plaintiff must show that the disparate treatment was motivated by impermissible consideration, including, for example, "malicious or bad faith intent" (*i.e.*, "ill will"). *See, e.g., Zahra v. Town of Southold*, 48 F.3d 674, 683 (2d Cir. 1995). Petitioner pleaded both of these claims alternatively, but seeks *certiorari* from this Court only with respect to his class-of-one claim. (*See generally* Pet. App.). The District Court addressed "ill will," but only — and properly — within the context of the selective enforcement claim. Petitioner incorrectly conflates these two claims in the Petition.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. The Court should deny the Petition.

Respectfully submitted,

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